

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JAMES KNAPP, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

ART.COM, INC., a California corporation;  
and DOES 1 through 50, inclusive,

Defendants.

Case No.: CV-16-00768-WHO

[Hon. William H. Orrick]

**REVISED ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 Plaintiff James Knapp's Unopposed Motion for Preliminary Approval of Class Action  
2 Settlement came before this Court on April 12, 2017. The Court, having considered the  
3 proposed Settlement Agreement and the exhibits attached thereto (hereafter, collectively, the  
4 "Settlement Agreement"), having considered the Motion and supporting documents, having  
5 considered the Parties' Joint Stipulation Re: Modification of Implementation Dates and  
6 Settlement Class Definition, and good cause appearing, HEREBY ORDERS AS FOLLOWS:

7 1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court grants  
8 preliminary approval of the Settlement as set forth in the Settlement Agreement, solely for the  
9 purposes of implementing the Parties' Settlement Agreement, and finds the terms to be within  
10 the range of reasonableness of a settlement that ultimately could be granted approval by the  
11 Court at the final Fairness Hearing. The Settlement Agreement is the result of arm's-length  
12 negotiations between experienced attorneys who are familiar with class action litigation in  
13 general and with the specific legal and factual issues in this case. The Court has considered the  
14 alleged merit of Plaintiff's claims, Defendant Art.com, Inc.'s potential liability, the procedural  
15 status of the case, the allocation of Settlement proceeds among Class Members, and the fact that  
16 the Settlement represents a compromise of the Parties' respective positions.

17 2. This Order ("Preliminary Approval Order") hereby incorporates by reference the  
18 definitions in the Settlement Agreement, and all terms herein shall have the same meaning as set  
19 forth in the Settlement Agreement.

20 3. The Court grants preliminary approval of the Settlement based on the terms set  
21 forth in the Settlement Agreement and preliminarily finds that the Settlement is fair, adequate,  
22 and reasonable to the Class Members.

23 4. The Court hereby certifies, for purposes of settlement only, the following class  
24 (the "Class"):

25 All persons, who between February 12, 2012, to June 9, 2016, purchased any product  
26 from Art.com through the e-commerce websites www.art.com, www.posters.com, and/or  
27 www.allposters.com, pursuant to a sale by entering a coupon code, and whose product  
28 was shipped to an address in the United States.

1 Excluded from this definition are the following individuals and/or entities: Art.com and  
2 its parents, subsidiaries, affiliates, officers and directors, current or former employees,  
3 and any entity in which Art.com has a controlling interest; all individuals who make a  
4 timely election to be excluded from this proceeding using the correct protocol for opting  
out; and all judges assigned to any aspect of this litigation, as well as their immediate  
family members.

5 5. The Court finds, for purposes of settlement only, that the Class meets the  
6 requirements for certification under Federal Rules of Civil Procedure Rule 23 in that: (1) the  
7 Class is so numerous that joinder of all members is impractical; (2) there are questions of law  
8 and fact that are common to the Class which predominate over individual issues; (3) Plaintiff's  
9 claims are typical of the claims of the Class; (4) Plaintiff and his counsel will fairly and  
10 adequately protect the interests of the Class; and (5) a class action is superior to other available  
11 methods for the fair and efficient adjudication of the controversy.

12 6. Plaintiff James Knapp is conditionally approved as the Class representative.

13 7. Schneider Wallace Cottrell Konecky & Wotkyns LLP and the Wand Law Firm  
14 are conditionally approved as Class Counsel.

15 8. The Court approves of Heffler Claims Group as the Settlement Administrator.

16 9. The Court approves as to form and content the Notice of Class Settlement  
17 ("Notice") attached as Exhibit A to the Settlement Agreement with the revision to the Class  
18 Definition set forth in the Parties' Joint Stipulation Re: Modification of Implementation Dates  
19 and Settlement Class Definition as reflected above.

20 10. The Court hereby authorizes the Settlement Administrator to send notice to Class  
21 Members as set forth in the Settlement Agreement.

22 11. The Court finds that method of providing notice to the Class as set forth in the  
23 Settlement and this Preliminarily Approval Order meets the requirements of due process,  
24 provides the best notice practicable to Class Members under the circumstances, and constitutes  
25 due and sufficient notice to all Class Members of the Settlement and their rights related thereto.

26 12. Class Counsel shall serve and file a motion for final approval of the Settlement  
27 and a motion for the award of attorneys' fees and litigation costs provided for in the Settlement  
28 by the deadline set forth below.

1           13.     A hearing to determine whether the Settlement is fair, reasonable and adequate to  
2 the members of the Settlement Class and whether the Settlement should be finally approved will  
3 be held no less than 105 days after entry of this Preliminary Approval Order, namely on  
4 **August 9, 2017 at 2:00 p.m.**, in Courtroom 2 of the United States District Court for the  
5 Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California  
6 94102 (“Final Approval Hearing”). The Court may adjourn or continue the date of the Final  
7 Approval Hearing without further notice to Class Members, and retains jurisdiction to consider  
8 all further applications or motions arising out of or connected with the Settlement.

9           14.     Any Class Member or other person may appear and show cause, if he or she has  
10 any, as to why the Settlement of the Class Action should or should not be approved as fair,  
11 reasonable and adequate, or why the Final Order and Judgment should or should not be entered;  
12 provided, however, that no Class Member or other person shall be heard or entitled to object to  
13 the approval of the terms and conditions of the Settlement, or, if approved, the Final Order and  
14 Judgment to be entered thereon approving the same, unless the Class Member or other person  
15 has served a written statement of objections and/or briefs in support of his or her position  
16 (“Notice of Objection”) upon the Settlement Administrator, and, in addition, filed his or her  
17 Notice of Objection and/or brief with the Clerk of this Court, in accordance with the instructions  
18 and deadline specified in the Class Notice and in this Preliminary Approval Order.

19           15.     Any Class Member or other person who does not serve and file a Notice of  
20 Objection in the manner provided for in this Preliminary Approval Order and the Class Notice  
21 shall be deemed to have waived any objections and shall forever be foreclosed from making any  
22 objection to or from taking any appeal from any determination regarding the fairness,  
23 reasonableness or adequacy of the Settlement, and all terms therein, or the Final Order and  
24 Judgment.

25           16.     Class Members who wish to opt out of or exclude themselves from the Class  
26 Action and, in turn, the Settlement, must do so in accordance with the instructions and deadline  
27 specified in the Class Notice and in this Preliminary Approval Order.  
28

17. Class Members shall continue to be bound by all determinations of the Court, and by the Settlement, whether favorable or unfavorable, until such time as they properly opt out of or exclude themselves from the Class Action, and, in turn, the Settlement, if at all.

18. The Court orders the Parties to carry out the Settlement according to its terms.


19. To the extent permitted by law, and pending a final determination as to whether the Settlement should be approved, Class Members, whether directly, representatively, or in any other capacity, and without regard as to whether or not such persons have appeared in the Class Action, shall not institute or prosecute any Released Claims against Defendant Art.com, Inc. or any of the other Released Parties.

20. The Court orders the following implementation schedule for further proceedings:

Deadline for Defendant to provide Class Information to Settlement Administrator	May 1, 2017
Deadline for Settlement Administrator to send Class Notice to Class Members and to make Settlement website	Three business days after entry of this Order
Deadline for Class Members to opt out of Settlement or serve and file written objections to Settlement ("Opt-Out and Objection Date")	July 21, 2017
Deadline for Class Counsel to file Motion for Attorneys' Fees and Costs	June 30, 2017
Deadline for Plaintiff to file Motion for Final Approval of Settlement of Class Action	July 27, 2017
Deadline for Settlement Administrator to submit declaration to Court re. Class Notice	July 31, 2017
Deadline for Settlement Administrator to submit declaration to Court affirming that Vouchers have been distributed	September 28, 2017

1           **IT IS SO ORDERED.**

2  
3  
4       DATED: May 18, 2017

5                                 
6                               \_\_\_\_\_  
7                               HONORABLE WILLIAM H. ORRICK  
8                               UNITED STATES DISTRICT COURT JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28